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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

604

No. ------

ISTHMIAN STEAMSHIP COMPANY,
Petitioner,

v.

COMPANIA DE NAVEGACION CEBACO, S. A.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Isthmian Steamship Company, prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland (R. 38) is reported at 104 F. Supp. 829. The opinion of the Court of Appeals for the Fourth Circuit (R. 79) has not yet been reported, but probably will appear in 200 F. 2d.

JURISDICTION

The decree of the Court of Appeals was entered on December 23, 1952 (R. 88). The jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1).

THE QUESTIONS PRESENTED

1. Whether the failure of one approaching vessel to answer the signals of another vessel creates a doubt requiring that the latter immediately give the danger signal.

2. Whether in a crossing situation the continuance of her course and speed by the so-called burdened vessel and her failure to answer the signals of the so-called privileged vessel do not constitute a distinct indication that the burdened vessel is about to fail in her duty, thus ending the right of the privileged vessel to continue her course and speed.

STATUTE INVOLVED

The questions presented involve Rule III of Article 18 and Articles 19, 21, 27 and 29 of the United States Inland Rules for the prevention of collisions (Act of June 7, 1897; 30 Stat. 100-102; 33 U. S. C. §§203, 204, 206, 212 and 221), which are as follows:

> "Art. 18 * * *
>
> "Rule III. If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle."
>
> "Art. 19. When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other."

"Art. 21. Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed."

"Art. 27. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

"Art. 29. Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

STATEMENT

This case arose from a collision between the American Steamship STEEL FLYER and the Panamanian Steamship DOMINA at 2:24 A. M. on the morning of March 28, 1951 in the Chesapeake Bay near Sandy Point Light about one mile above the Chesapeake Bay Bridge, then under construction.

The DOMINA, inward bound to Baltimore, after passing through the bridge construction area, was on the starboard side of the STEEL FLYER, south bound from Baltimore to Norfolk. The vessels were thus on crossing courses and the STEEL FLYER was the so-called burdened vessel, charged under Article 19 of the Inland Rules with the duty of keeping out of the way of the DOMINA. Both the District Court (R. 42) and the Court of Appeals (R. 81) found against the STEEL FLYER's contention that she had been misled by the DOMINA's lights and hence was not aware that the DOMINA was a vessel under way until shortly before collision. Consequently both Courts held

the STEEL FLYER at fault for failing to yield the right of way to the so-called privileged vessel. That conclusion is not further challenged, and the only question still remaining is whether the DOMINA was not also at fault.

The testimony of the witnesses for the DOMINA and her own log book (R. 75-76; offered in evidence at p. 243 of typewritten record) establish that:

1. At 2:18, as the DOMINA passed Buoy 4W at the north end of the bridge construction area, she sighted the STEEL FLYER about two and three-quarters miles away, and then blew a one blast signal because her pilot "did not like the way the other ship was approaching". She heard no reply to her whistle (R. 15, 20).

2. At 2:21, continuing the same course and speed, the DOMINA blew a second one blast signal, to which also she received no answer (R. 33).

3. At 2:23 the DOMINA, still maintaining her course and speed, although the burdened vessel appeared neither to have slowed down nor to have changed course, heard a three blast signal from the STEEL FLYER, then about one-half mile away, following which the DOMINA's engines were put full speed astern and a three blast signal given (R. 23).

4. At 2:24 the vessels came into collision.

5. Although the pilot of the DOMINA did not like the way the other vessel was approaching and was wondering about her navigation, and although he had received no answer to his signals, he continued his course and speed without blowing a danger signal or taking any action to avoid the collision for five minutes

from the first whistle signal at 2:18 until he finally reversed the DOMINA's engines at 2:23, one minute before the collision (R. 59).

The District Court (R. 41) held the DOMINA at fault both for continuing her course and speed too long regardless of the danger involved in so doing, thus violating the General Prudential Rule (Article 27 of the Inland Rules, *supra*, p. 3), and for failing to blow a danger signal as required by Rule III of Article 18 (*supra*, p. 2).

The Court of Appeals reversed the decision of the District Court as to the DOMINA's fault. It concluded that the DOMINA properly continued her course and speed and hence did not violate Article 27, and further held, without the slighest discussion of the absence of any replies to her signals, that there was no occasion to comply with Rule III of Article 18 because it construed the pilot's testimony as showing only necessary interest and concern rather than a doubt about the course or intention of the other vessel.

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals for the Fourth Circuit has rendered a decision in conflict with a decision of the Court of Appeals for the Second Circuit, holding that the failure of one vessel to answer the signals of another creates a doubt requiring the latter to blow the danger signal in accordance with Rule III of Article 18, and probably in conflict with a somewhat similar decision of the Court of Appeals for the First Circuit. The decision is also probably in conflict with a decision of this Court in an analogous situation occurring prior to the enactment of Article 18 of the present Inland Rules. Furthermore the decision involves an important question of maritime law which should be decided by this Court.

II. The Court of Appeals for the Fourth Circuit, in holding that in a crossing situation the continuance of her course and speed by the burdened vessel and her failure to answer the signals of the privileged vessel do not constitute a sufficient indication that the burdened vessel is about to fail in her duty, thus ending the right of the privileged vessel to continue her course and speed, has decided an important question of Federal law which has not been, but should be, decided by this Court.

I.

In the face of the District Court's decision that "After the pilot of the 'Domina' had received no answer to his second one-blast, if not indeed after he had received no answer to his first one-blast, he should have blown the danger signal; * * *" (R. 41), it is clear that the Court of Appeals, although not specifically commenting on the absence of any replies to the DOMINA's signals, necessarily held that the failure of the STEEL FLYER to answer such signals did not create a doubt as to her course and intention sufficient to require that the DOMINA give a danger signal in accordance with the provisions of Rule III of Article 18.

Such a decision is squarely in conflict with the decision of the Court of Appeals of the Second Circuit in *James McWilliams Blue Line v. Card Towing Line*, 168 F. 2d 720 (1948). That case involved a collision between two tugs in the Hudson River. On appeal from a decision holding one tug solely at fault the Court of Appeals modified the decree to hold the other tug also at fault because, having blown a one blast signal to which it received no answer, it then blew a second one blast signal and, again receiving no answer, continued on its way for another half minute

before blowing the danger signal. The Court, speaking through Judge Learned Hand, said at page 721 (omitting the reference to citations in the footnotes):

> "The failure to blow the alarm at the time when she blew the second single blast was a statutory fault; and it is apparent, not only that the 'Feeney' has not proved that it could not have caused the collision; but there is the strongest probability that but for the delay there would have been no collision; for, had she, when she blew her second single blast, at once blown an alarm and put her rudder hard right, she would almost certainly have gone clear. Being already abreast of the bow of the anchored ship, she had nothing to fear in doing so; it was slack water and she was making three miles an hour over the ground.
>
> Rule III of Article 18 of the Inland Rules provides that 'if * * * either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving' the alarm. As we said in Socony-Vacuum Transportation Co. v. Gypsum Packet Co., *to repeat an invitation for a passing or a crossing inevitably presupposes that the inviting vessel is 'in doubt' as to the 'intention' of the other;* it can only mean: 'You don't answer my invitation to pass port-to-port, I am repeating it because I still think it the proper course and I want to know whether you agree.' In a number of cases courts have held vessels liable for failing to sound the alarm in such circumstances, and indeed in Henry Du Bois Sons Co. v. A/S Ivarans Rederi, we held it a fault even to delay doing so, for the action must be taken 'immediately' after any doubt arises in the mind of the inviting vessel" (Italics supplied.)

It is thus quite apparent that the Court of Appeals for the Second Circuit is in accord with the views of the District Court that the danger signal should have been blown after the DOMINA failed to receive any answer to her first signal,

and, beyond all question, after she failed to receive an answer to her second signal. Yet the Court of Appeals for the Fourth Circuit has held, notwithstanding the failure to receive an answer to her signals, that there was no doubt as to the course and intention of the other vessel requiring that the DOMINA blow the danger signal prescribed by Rule III of Article 18.

The decision of the Court of Appeals for the Fourth Circuit is probably in conflict also with a decision of the Court of Appeals for the First Circuit in *General Foods Corporation v. J. S. Packard Dredging Company*, 120 F. 2d 117 (1941). Although that decision referred to other causes of doubt than the mere failure to receive an answer to its signals, such a failure had a bearing on the duty to abide by Rule III of Article 18 which the Court found had been violated. The Court said at page 119:

> "The rule above, known as the 'major and minor fault' rule, placed the burden upon the Exeter to show that the Trim committed a plain fault. We think this burden was sustained. The trial judge found that the Trim did not give the danger signal until a few seconds before the collision. There was ample evidence to support this finding. Rule III of Article 18 of the Inland Rules provides that 'if, when steam vessels are approaching each other either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall *immediately* signify the same by giving several short and rapid blasts, not less than four, of the steam whistle.' (Italics supplied.) The evidence is clear that the Trim did not comply with this rule. The captain of the Trim testified that he had remarked upon the erratic course of the Exeter from the moment he saw her and had frequently expressed failure to understand her course or intention. Cf. The Wydale, C. C. La. 1889, 37 F. 716, 718. The trial judge found, on disputed testimony,

that the Trim signalled for a port to port passing but got no reply, and the captain of the Trim testified that after giving that signal he was still at a loss to know what the Exeter intended to do. Accepting the testimony of those on the Trim as true, this signal was blown when the ships were half a mile apart, but in spite of his uncertainty — which must have been momentarily increasing as the distance between them decreased — and in spite of the statutory rule requiring the *immediate* blowing of the danger signal, the Trim, by the testimony of those aboard her, blew no such signal until the Exeter was only 200 feet away, a question of seconds before the collision. It is clear that by thus violating Rule III of Article 18, the Trim was guilty of a plain fault."

Although this precise point has never been passed upon by this Court, the decision of this Court in *The New York*, 175 U. S. 187 (1899), involving a collision occurring in 1891, prior to the enactment of the Inland Rules in 1897, indicates that the decision of the Court of Appeals is probably in conflict with the views entertained by this Court in a somewhat similar situation. The Rules then in force (Act of April 29, 1864; 13 Stat. 58; Rev. Stat. §4233) contained no provision comparable to Rule III of Article 18 of the present Inland Rules. However the Supervising Inspectors, as authorized by Rev. Stat. §4412, had adopted and there was then in effect a rule (which was the forerunner of Rule III of Article 18 of the Inland Rules) which read as follows:

"Rule III. If, when steamers are approaching each other, the pilot of either vessel fails to understand the course of the other, whether from signals being given or answered erroneously or from other cause, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle; * * *" (175 U. S. 187 at 195).

Against that background of the then existing rules, this Court, in holding at fault a vessel which proceeded on its way, although it had received no answer to any of its three successive signals, said at page 201:

> "Receiving no answer to her first blast, the Conemaugh, when the two steamers were about three quarters of a mile apart, repeated her signal of two blasts — the New York then showing her masthead and both colored lights. Again no reply was made by the New York. The Conemaugh, which had then ported and was heading toward the Canadian shore, and about four points from the direct course down the river, gave a third signal of two blasts, the New York continuing to show all three of her lights, and being apparently close to and between the second and third barges of the tow. The New York made no answer to this third signal. The duty of the Conemaugh at this juncture was plain. She should have stopped her engines after the second signal, and, if necessary to bring her to a complete standstill, have reversed them. Nothing is better settled than that, if a steamer be approaching another vessel which has disregarded her signals, or whose position or movements are uncertain, she is bound to stop until her course be ascertained with certainty."

As a matter of fact the Circuit Court of Appeals for the Fourth Circuit had reached the same conclusion in *The City of Chester,* 78 Fed. 186 (1897), when construing the same rule of the Supervising Inspectors. Although its attention was specifically directed to that decision, the present Court ignored the holding of the earlier Court that the failure to receive answers required that she blow the signals required by the third pilot rule. That Court said at page 190:

> "She blew her first blast to the City of Chester, got no response; blew again, with like result. This should

> have put her on her guard, and have indicated that something was out of the usual course, — something which required explanation. She should have obeyed the requirements of the third pilot rule: * * *"

It may also be remarked that the decision of the Court of Appeals for the Fourth Circuit is contrary to the decision in *The Admiral Watson*, 266 Fed. 122 (D. C. Wash. 1920), where it was held that a vessel failing to get a response to her signal violated the Inland Rules by not giving the danger signal.

It has been held that the failure to blow a danger signal as required by Rule III of Article 18 of the Inland Rules constitutes a statutory fault. *James McWilliams Blue Line v. Card Towing Line, supra; The Fulton*, 54 F. 2d 467 at 469 (2 C. C. A. 1931). A statutory fault requires the application of the rule announced by this Court in *The Pennsylvania*, 19 Wall. 125 at 136 (1873), that it is incumbent on any vessel violating a statutory rule to show not merely that her fault might not have been, or probably was not one of the causes of the collision, but that it could not have been. That the DOMINA clearly failed to do.

It is submitted that the observance of Rule III of Article 18 of the Inland Rules is of the utmost importance in preventing collisions. One of the most effective precautionary steps any vessel can take is a timely giving of the danger signal. It is hard to imagine a clearer case of doubt as to the course and intention of another vessel than that which necessarily results from the failure or refusal of such vessel to answer the signals of an approaching vessel. Because of its importance in the maritime law, this Court should resolve the present conflict between the circuits.

II.

It has been repeatedly held that there is no "right of way" into collision. The Court of Appeals for the Fourth Circuit paid lip service to that rule, but rendered a decision which does it the greatest violence.

Notwithstanding the requirements of Article 21 of the Inland Rules, that the so-called privileged vessel shall keep her course and speed, this Court has said that such a right is qualified by the General Prudential Rule (Article 27 of the Inland Rules, *supra*, p. 3). The leading case is *The New York*, 175 U. S. 187 (1899), where, in discussing the alleged fault of the privileged vessel in continuing her course and speed until a collision resulted, this Court said at pages 205-206:

> "Her only excuse for her omission is that she was the preferred vessel within the nineteenth American and sixteenth Canadian rule, and that by the twenty-third American and twenty-second Canadian rule, it was her duty to keep her course. But the fact that a steamer is entitled to hold her course does not excuse her from inattention to signals, from answering where an answer is required, or from adopting such precautions as may be necessary to prevent a collision, *in case there be a distinct indication that the obligated steamer is about to fail in her duty.* As was said in the case of *The Sunnyside*, 91 U. S. 208, 222: 'Cases arise in navigation where a stubborn adherence to a general rule is a culpable fault, for the reason that every navigator ought to know that rules of navigation are ordained not to promote collisions, but to save lives and property by preventing such disaster.' * * * Both the Canadian and American codes provide that in construing and obeying these rules, due regard must be had to all dangers of navigation and to any special circumstances which may exist in any particular case,

> rendering a departure from them necessary in order to avoid immediate danger. * * * The Master of a preferred steamer cannot, by blindly adhering to his course, atone for the neglect of other precautions." (Italics supplied.)

Still later in a collision involving a provision of the Inspectors' Rules in a crossing situation, this Court said in *Postal Steamship Corporation v. El Isleo*, 308 U. S. 378 at 387:

> "The plain purpose of the Inspectors' Rules is to minimize the danger of collision. The so-called privileged vessel has no absolute right to keep her course and speed regardless of the danger involved in that action. *Her right to maintain her privilege ends when there is danger of collision* and in the presence of that danger both vessels must be stopped and backed if necessary, until signals for passing with safety are made and understood." (Italics supplied.)

Although there is thus no doubt that even a privileged vessel has no right of way into collision, there is still uncertainty as to when avoiding action must be taken. In *The New York, supra,* and in *The Delaware*, 161 U. S. 459 at 468 (1896), it was said that the right to continue course and speed ends and the necessity for adopting precautions begins when there is "a distinct indication that the obligated vessel is about to fail in her duty." *Postal Steamship Corporation v. El Isleo, supra,* holds that the privilege ends "when there is danger of collision."

The difficulty arises in determining "when there is danger of collision", or what constitutes "a distinct indication that the obligated vessel is about to fail in her duty". This Court has so far not established any guides for arriving at those determinations. In *The Delaware*, 161 U. S. 459

at 470, there is a suggestion that an unanswered signal would constitute such an indication, but a holding to that effect was unnecessary because the Court there found that, although in fact there was no answer from the obligated vessel, the privileged vessel reasonably believed that there had been. In *The New York, supra,* the failure to answer was by the privileged vessel, and it is not clear just what indication that vessel had that the burdened vessel was about to fail in her duty. The decision in *Postal Steamship Corporation v. El Isleo* left to the Court of Appeals the question of considering the conduct of the El Isleo in the light of the provisions of the Inspectors' Rules which this Court held were not invalid. Subsequent proceedings in that case, 112 F. 2d 297, resulted in a decision that the blowing of cross signals by the obligated vessel required that the privileged vessel no longer continue her course and speed because of the danger of collision.

Concededly the task of a master or pilot of a privileged vessel, charged with the duty of continuing her course and speed, is not an easy one when encountering an approaching vessel in a situation involving risk of collision. As said in *The Quogue,* 47 F. 2d 873 (2 C. C. A., 1931), and quoted by this Court with approval in *Postal Steamship Corporation v. El Isleo,* 308 U. S. 378 at 388:

> "It is a hard rule which requires a master when he sees another vessel about to cross his bow with wanton disregard of his rights to stop and allow the arrogant usurper to pursue his wrongful course. But safety is better than pride, and, however slight the hope that rules to promote safety will be observed under such circumstances, whatever courts may say, the vessels must be judged according to their legal duties."

We think there manifestly is a distinct indication that an obligated vessel is about to fail in her duty to give way to the privileged vessel when she does not respond to the signals of the other vessel but continues her course and speed across the bow of the privileged vessel. Yet the decision of the Court of Appeals for the Fourth Circuit in this case encourages the privileged vessel to insist on her right of way in the face of just such conduct by the burdened vessel. We submit that such a result is not only contrary to the underlying principles of the decisions of this Court, but gives support to a dangerous doctrine which should not be permitted a foothold in the maritime law.

CONCLUSION

Because of the conflict between the Circuits and the importance of the questions of Federal law presented, it is accordingly urged that a writ of certiorari to review the decree of the Court below should be granted.

Respectfully submitted,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

Opinions Below.

The opinion of the Court of Appeals for the Fourth Circuit (R. 79-87) is reported at 200 F. 2d 643. The opinion of the United States District Court for the District of Maryland (R. 38-44) is reported at 104 F. Supp. 829.

Jurisdiction.

The decree of the Court of Appeals was entered on December 23, 1952 (R. 88). The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254 (1).

Question Presented.

The real question presented is whether on all the evidence a finding was warranted that the navigator of a privileged vessel in a crossing situation, in the absence of a distinct indication that the other vessel was about to fail in her duty, properly held his course and speed so long as it was possible for that other vessel to avoid collision.

The decision of the Court of Appeals, answering such question in the affirmative and holding the navigator of the privileged vessel free of fault, involves no conflict with the decisions of this Court or any other Court.

Statutes Involved.

Petitioner in its petition at pages 2 and 3 has set forth certain of the Pilot Rules for Inland Waters. A more comprehensive quotation of relevant rules appears at R. 47-51. In particular, reference is made to Rule I of Art. 18 (Act of June 7, 1897; 30 Stat. 100-102; 33 U. S. C. Sec. 203) as follows:

> "Art. 18. Rule I. When steam vessels are approaching each other head and head, that is, end on, or nearly so, it shall be the duty of each to pass on the port side of the other; and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other. But if the courses of such vessels are so far on the starboard of each other as not to be considered as

meeting head and head, either vessel shall immediately give two short and distinct blasts of her whistle, which the other vessel shall answer promptly by two similar blasts of her whistle, and they shall pass on the starboard side of each other.

"The foregoing only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, and by night to cases in which each vessel is in such a position as to see both the sidelights of the other.

"It does not apply by day to cases in which a vessel sees another ahead crossing her own course, or by night to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead."

The question presented also involves the Pilot Rules for Inland Waters as promulgated by the Commandant, U. S. Coast Guard (Title 33, Chapter III, Part 312, C. F. R.), as follows:

"312.03 Signals.—The whistle signals provided in the rules in this part shall be sounded on an efficient whistle or siren sounded by steam or by some substitute for steam.

A short blast of the whistle shall mean a blast of about one second's duration.

A prolonged blast of the whistle shall mean a blast of from 4 to 6 seconds' duration.

One short blast of the whistle signifies intention to direct course to own starboard, except when two steam vessels are approaching each other at right angles or obliquely, when it signifies intention of steam vessel which is to starboard of the other to hold course and speed.

Two short blasts of the whistle signify intention to direct course to own port.

Three short blasts of the whistle shall mean, 'My engines are going at full astern.'

When vessels are in sight of another a steam vessel under way whose engines are going at full speed astern shall indicate that fact by three short blasts on the whistle."

Statement.

The S/S "Domina", respondent's vessel, and the S/S "Steel Flyer", petitioner's vessel, collided about 2:24 a. m., March 28, 1951, in Chesapeake Bay, the collision occurring about one-half mile east and a little to the south of Sandy Point Light. The night was dark and clear with visibility of from 8 to 10 miles and a light southwesterly wind.

The "Domina" is a steel, coal-burning cargo vessel of 5,531 gross tons, 426 feet in length, built in 1925. At the time of collision she was loaded with a bulk cargo of iron ore and was on a voyage from Narvik to Baltimore.

The "Steel Flyer" is a modern, high-powered, quick handling cargo steamer of standard "C-3" type. She has oil-burning, steam-turbine engines of 8,600 horsepower and is of 8,018 gross tons, 493 feet in length.

Partly loaded with general cargo, she had departed on the early morning of March 28th from Baltimore bound down Chesapeake Bay for Norfolk, Virginia. She had no licensed member of the Chesapeake Bay Pilots Association aboard but did have a licensed coast pilot.

The "Domina" was boarded by a licensed Chesapeake Bay pilot, E. W. Holland, at Cape Henry, Virginia, and thereafter he was actively directing navigation and maneuvers. The "Domina" was exhibiting colored side lights, two white masthead and range lights and a stern light, all burning brightly.

Full speed of the "Domina" was from 8 to 8½ knots, and on a half ahead bell she is estimated to have made 6½ knots. The "Domina" approached the buoyed area marking bridge construction work below Sandy Point on a course of 22° magnetic and in position to pass slightly to starboard of the mid-channel area of the principal buoyed passage, proceeding at full ahead. On entering the passage, at 2:10 a. m., the pilot ordered half ahead on the ship's engines and maintained his course. On entering the bridge passage, the pilot observed what proved to be the "Steel Flyer" bearing two points to port and showing her green light and range lights. He estimated that the "Steel Flyer" was then 5¼ miles away and above Sandy Point Light. The "Steel Flyer" in her progress toward the bridge area would be expected to change her course to starboard when she arrived off Sandy Point, in order to head for and pass through the channel in the bridge area.

Just prior to passing buoy 4W at the northerly end of the bridge area passage, course was changed 8° to

the right to 30° magnetic to allow abundant clearance to the entrance to the channel to the ship coming from the north. This change of course to 30° was made at 2:16. The vessels thereafter were on crossing courses so that under Articles 19 and 21 of the U. S. Inland Rules (R. 49) it was the duty of the "Steel Flyer" to keep out of the way of the "Domina", and it was the duty of the "Domina" to keep her course and speed.

At 2:18, when the vessels were nearly three miles apart, the "Domina" blew one blast. Under the rules in force in the Inland Waters of the United States this signified, not that she was altering her course, but rather that she was maintaining her course and speed (R. 51). No reply was heard, and at about 2:21 the "Domina" blew another single blast. The "Steel Flyer", instead of giving way or altering her course to starboard to pass through the bridge area, as pilot Holland had every reason to expect, continued to hold her course and speed in such manner as to cross ahead of the "Domina" on a course diverging from the parallel about 3 points or a little more than 30°. Shortly afterward a three blast signal was heard from the "Steel Flyer". It had now become apparent that the "Steel Flyer" had failed to observe the "Domina" and to comply with the rules and that further action was required on the part of the "Domina". Within a very few seconds, pilot Holland ordered the engines stopped and immediately full astern, at the same time blowing a three-blast signal. At 2:24 collision occurred, the "Steel Flyer" having crossed the "Domina's" bow immediately prior thereto and the bow of the "Domina" coming in contact with the starboard quarter of the "Steel Flyer" abreast her No. 5 hatch.

Both the District Court and the Court of Appeals found that the navigators of the "Steel Flyer" were confused, uncertain and in disobedience of the rules of navigation and that the "Steel Flyer" was guilty of gross negligence. The fault of the "Steel Flyer" has now been conceded by petitioner (Pet. 3, 4).

Although the District Court found there was great disparity between the actions of the respective pilots, it, nevertheless, believing that the Rules required the establishment of an agreement through the exchange of signals, found contributory negligence on the part of the "Domina".

The Court of Appeals pointed out that the obligations of the vessels were fixed by the Rules which do not provide for establishment of a mutuality of understanding in a crossing situation as in such case each vessel knows what the other must do, and that the authorities which hold that doubt may arise from non-answer of a signal where an agreement must be proposed and accepted are not determinative of other situations. The Court of Appeals, in view of the normally-to-be-anticipated change of course of the "Steel Flyer" off Sandy Point, found that until the "Steel Flyer" blew three blasts there was no clear indication that she was about to fail in her duty and that the case strongly resembled the circumstances of *The Delaware,* 161 U. S. 459. The "Domina" was held to be without fault and the judgment was reversed as to the liability of the "Domina".

ARGUMENT.

POINT I.

The general principles established by statute and by the decisions of this Court were correctly applied by the Court of Appeals.

It is common ground that collision occurred when the vessels were in a crossing situation, that it was the duty of the "Steel Flyer" to keep clear, that she did not comply with her statutory obligations and that she was grossly at fault.

It is also equally clear that under Articles 19 and 21 of the U. S. Inland Rules (R. 49) there was a statutory duty upon the "Domina" to keep her course and speed.

The obligations of the "Domina" under these circumstances were definite and precise. Departure from statutory obligation is excusable only in rare instances, and even then the burden is placed upon the vessel which departs from the rules to prove that such departure could not have been a cause of an ensuing collision. *The Pennsylvania*, 19 Wall. 125, 136.

In *Belden* v. *Chase*, 150 U. S. 674, 699, Mr. Chief Justice Fuller said:

> "Obedience to the rules is not a fault even if a different course would have prevented the collision, and the necessity must be clear and the emergency sudden and alarming before the act of disobedience can be excused. Masters are

bound to obey the rules and entitled to rely on the assumption that they will be obeyed, and should not be encouraged to treat the exceptions as subjects of solicitude rather than the rules. *The Oregon* v. *Rocca*, 59 U. S. 570."

The leading case on the duty of the holding-on vessel is *The Delaware*, 161 U. S. 459, an authority never questioned. In *Wilson* v. *Pacific Mail S. S. Co.*, 276 U. S. 454, Mr. Justice McReynolds quoted from *The Delaware* as follows:

"The cases of *The Britannia*, 153 U. S. 130, and *Hutchinson* v. *The Northfield*, 154 U. S. 629, must be regarded, however, as settling the law that the preferred steamer will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her by porting, at least in the absence of some *distinct indication* that she is about to fail in her duty. If the master of the preferred steamer were at liberty to speculate upon the possibility, or even of the probability, of the approaching steamer failing to do her duty and keep out of his way; the certainty that the former will hold his course, upon which the latter has a right to rely, and which it is the very object of the rule to insure, would give place to doubts on the part of the master of the obligated steamer as to whether he would do so or not, and produce a timidity and feebleness of action on the part of both, which would bring about more collisions than it would prevent. *Belden* v. *Chase*, 150 U. S. 674; *The Highgate*, 62 L. T. N. S. 841, s. c. 6 Asp. Mar. L. Cas. 512."

It was the duty, therefore, of the "Domina" to maintain her course and speed so long as it was possible for the other to avoid her. In this case, the "Domina" did take action by going full speed astern and by blowing three blasts to indicate this when the vessels were, in the best judgment of pilot Holland, about one-half mile apart. Certainly, up to this point, the "Steel Flyer", high powered and quick handling, could easily have avoided collision, either by going to her starboard or slowing or both as she was bound to do by the rules. Had the "Domina" changed her course or altered her speed prior to this point, she herself would have been at fault for premature action. *The Britannia*, 153 U. S. 130.

There was, furthermore, no prior distinct indication that the "Steel Flyer" was about to fail in her duty.

The "Domina's" two one-blast signals and following three-blast signal were lawful. No signal exchange is required by the Inland Rules in a crossing situation. Where vessels are meeting head and head, a situation governed by Article 18, Rule I of the Inland Rules (R. 48, 49), an agreement is required through an exchange of signals and neither vessel may take helm action until agreement is established even though by hypothesis helm action will be required to avoid collision. Failure to receive an answer to a signal in such situation, as was recognized by the Court of Appeals (R. 82), may well constitute an indication of failure of understanding and of doubt. In a crossing situation it is otherwise. The necessary action is already prescribed and the one-blast signal of the holding-on vessel is merely an announcement that she is abiding by the rules. Whether and when uncertainty, doubt or sudden emergency exist must be deter-

mined upon consideration of all the circumstances of the particular case.

The "Domina's" single blasts indicated that she was holding her course and speed. Her three blasts, which were the equivalent of a danger signal, indicated that she had gone full astern. The signals meant this, they meant only this, they could not have been understood to mean anything else, and to the extent they were heard, they were correctly interpreted.

It should be noted that the so-called danger signal is to be blown only when one vessel fails to understand the course or intention of the other. The particular circumstances of this case indicate that the giving of the danger signal should be correlated with the rule of *The Delaware*, 161 U. S. 459, that the holding-on steamer must maintain her course and speed "so long as it is possible for the other to avoid her by porting, at least in the absence of some *distinct indication* that she is about to fail in her duty".

As stated by the Court of Appeals, the facts in the present case strongly resemble the collision between the "Delaware" and the "Talisman", which was considered by this Court in *The Delaware*, 161 U. S. 459. In that case the "Talisman", a tug, was approaching and crossing the mouth of Gedney channel off New York. Approaching her from her port at almost right angles was a tank vessel, the "Delaware". The "Delaware", which was the burdened vessel, in ordinary course would have had to swing to her right some 30 degrees to proceed up Gedney channel. The vessels sighted each other when a mile or more apart. The "Talisman", under duty in a crossing situation to hold her course and speed, did so until the moment

of collision. The "Talisman" blew one blast when the vessels were a mile apart. She blew another one blast when they were a quarter mile or a little less apart. Neither signal was answered. When the "Delaware" was a length off, the "Talisman" blew a three-blast signal. The "Delaware", instead of slowing or going to her right under the tug's stern and proceeding up the side of the channel to her starboard, kept on diagonally across the channel, struck the tug and sank her. The "Delaware" was held solely at fault. The Court stated the rule that it was the duty of the tug to hold on as she did until there was a "distinct indication" that the "Delaware" would not comply with her obligation to keep clear. The Court then said (p. 469), as it might well have said here, the factual situation was so similar:

> "In the case under consideration there was really nothing to apprise the tug that the 'Delaware' would not port and go under her stern, until the collision became inevitable. The vessels were in plain sight of each other. The 'Delaware' was entering a channel, whose course was marked by buoys, and she could not possibly have continued her then course without soon crossing the line of black buoys, which marked the southerly edge of the channel. There was every reason to suppose that as soon as she passed the line of red buoys at the northerly edge, she would port and take her proper course up the channel, and if for any reason she was unable to do this, it was her plain duty to apprise the tug of the fact either by blowing the starboard signal of two whistles, or an alarm whistle, to indicate that the circumstances were such as to render it impossible for her to fulfill her obligation to keep out of the way

of the tug. If she had done so a different question would have been presented. Until the last moment the tug had a right to assume that she would comply with the rule. Had the tug stopped and reversed, she might not only have brought about a collision with the 'Delaware', but would have incurred the danger of a collision with her own tow. It is true the 'Delaware' did not answer the signals of the 'Talisman' as she should have done, but Captain Winnett, who was in charge testifies that he was under the impression that (fol. 88) she answered the first whistle, and made an allegation to that effect in his libel. He appears to have been mistaken in this, but as the morning was somewhat thick he might have thought so, and was not in fault for acting upon that hypothesis. The second whistle was given so late that the vessels were evidently *in extremis* before a reasonable time had elapsed in which to answer it. In any event there is too much doubt about the fault of the 'Talisman' to justify us in apportioning the damages."

In the present case, until the vessels were a half mile apart and until three blast signals were exchanged, there was no indication whatever that the "Steel Flyer" would fail in her duty. The collision occurred at almost the precise point where, in normal circumstances, a vessel bound down Chesapeake Bay as the "Steel Flyer" was, would alter course to her starboard by 35° to 40° so as to be in line with and make a proper approach to the channel through the bridge construction work. Pilot Holland expected not only that the "Steel Flyer" would obey the sailing rules but would, at any event, turn to starboard as a natural incident of her normal course.

The "Domina's" first single blast was given at a distance of nearly three miles, and pilot Holland could well have assumed that it might not have been heard. The giving of the second one-blast signal was entirely proper, and this second blast was followed, as we have already shown, by the three-blast signal which was given at the appropriate time.

Most certainly, the situation required the careful attention that pilot Holland gave it, but equally certainly, there was no "distinct indication" that the course or intention of the "Steel Flyer" was or would be improper until she came within one-half mile of the "Domina", when her gross inattention for the first time became apparent. The danger signal was then given; it was not required to be given earlier. The Court of Appeals was clearly right in so holding.

The decision of the Court of Appeals, furthermore, is not in conflict with other decisions of this Court cited by petitioner, *The New York*, 175 U. S. 187, and *Postal Steamship Corporation* v. *El Isleo*, 308 U. S. 378.

A crossing situation in a narrow, obstructed channel was involved in *The New York*, 175 U. S. 187. It is of importance to note, however, that the signals that went unanswered in that case were those of the burdened vessel which was obligated to keep clear. Instead of announcing her intention to abide by the rules, as the "Domina" did, the "Conemaugh", the burdened vessel, blew two blasts indicating that she was about to violate the statutory obligation of a burdened vessel and to cross ahead of the privileged vessel, and then repeated these two blasts twice more. Certainly the failure to receive a reply in those cir-

cumstances presented a situation entirely different from the present case. As to the "New York", the privileged vessel, this Court held that she was conspicuously at fault for not hearing the signals which advised her that the "Conemaugh" was about to navigate so as to involve certainty of collision should the "New York" keep her course and speed.

In *Postal Steamship Corporation* v. *El Isleo*, 308 U. S. 378, there was an exchange of cross signals which, in itself, is the plainest indication that danger of collision exists. There were no cross signals in the present case.

POINT II.

The decision of the Court of Appeals involves no conflict with the decisions of any other Court.

In alleging a conflict of decisions, petitioner has relied principally upon the case of *James McWilliams Blue Line* v. *Card Towing Line*, 168 F. 2d 720 (C. C. A. 2). In considering possibility of conflict in decisions of Courts, the opinions must be read in connection with the facts. *White* v. *Aronson*, 302 U. S. 16. In the *James McWilliams Blue Line* case, two tugs, each encumbered by a tow, were navigating in close proximity to a line of piers and between that pier line and an anchored vessel. The tugs were meeting head to head, did not observe each other until they were only 1500 feet apart and no whistle was blown until they were only 1000 feet apart. The second whistle was blown when the vessels were only a few hundred feet apart and when there was urgent neces-

sity of helm action to avoid collision. The Court pointed out that the vessels were meeting head and head and not crossing and that neither could take helm action until an agreement had been established. In these special circumstances, the Court stated that the repetition of the proposal for port to port passing presupposed doubt as to the intention of the other. As already noted, the requirements for signals in a crossing situation are quite different from those which must be given when vessels are meeting head to head; establishment of agreement by exchange of signals is not required in a crossing situation. As further noted, excerpts from a decision should not be utilized apart from an examination of circumstances in connection with which they were used. It is clear from the opinion in the *James McWilliams Blue Line* case that the Court there did not intend to establish a rule of general application in all circumstances, for the Court went on to refer to other cases where signals are not intended as an invitation or any part of any agreement and stated that in such cases there was no objection to the repetition of the signal. The *James McWilliams Blue Line* case is clearly not in conflict with the present case where the circumstances are entirely different and where detailed consideration was given to the problem of whether in fact doubt did exist.

The other cases cited by petitioner involved cross signals which, of themselves, constitute distinct indication giving rise to doubt and uncertainty or cases of approaching head and head where establishment of agreement is required or cases where the vessels were in far closer proximity than they were here, in restricted areas, where the inference of doubt might well have been logical. *The Admiral Watson,* 266 Fed. 122

(D. Wash.); *The City of Chester,* 78 Fed. 186 (C. C. A. 4); *The Fulton,* 54 F. 2d 467 (C. C. A. 2); *General Foods Corporation* v. *J. S. Packard Dredging Company,* 120 F. 2d 117 (C. C. A. 1), and *The Quogue,* 47 F. 2d 873 (C. C. A. 2), all fall within these categories. The case of *General Foods Corporation* v. *J. S. Packard Dredging Company,* 120 F. 2d 117 (C. C. A. 1), is illustrative. A collision occurred in Boston Harbor between a tug and tow proceeding on its starboard side of a narrow, obstructed channel and a fishing vessel which was following an erratic zig-zag course but, nevertheless, within the provisions of the rule applicable to vessels meeting head and head. The privileged vessel blew one blast when the vessels were one-half mile apart and then took no further action until the vessels were only 200 feet apart, a matter of seconds before the collision, although the master of the tug had commented on the erratic course of the fishing vessel from the moment he saw her and had frequently expressed failure to understand her course or intention. A decision in such circumstances constitutes no precedent for the crossing situation in open waters involved in the present case where proper and timely signals were given by the "Domina".

In the present case, in spite of the assertions of the petitioner to the contrary (Pet. 5), the circumstances, including the matter of signals, were exhaustively considered by the Court of Appeals. Its decision that the actions of the pilot of the "Domina" were in all respects proper is in accordance with the evidence and is not in conflict with any reported decision.

Conclusion.

The present case involves the application of general and undisputed principles of law to the peculiar circumstances of a particular collision. In substance, petitioner seeks a rehearing of a determination of fact.

The decision below was clearly correct and its result was in accordance with the interests of substantial justice. We respectfully submit that the Petition for Certiorari should be denied.

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